

Managing and Avoiding Conflict in the Extended Family Farm Business

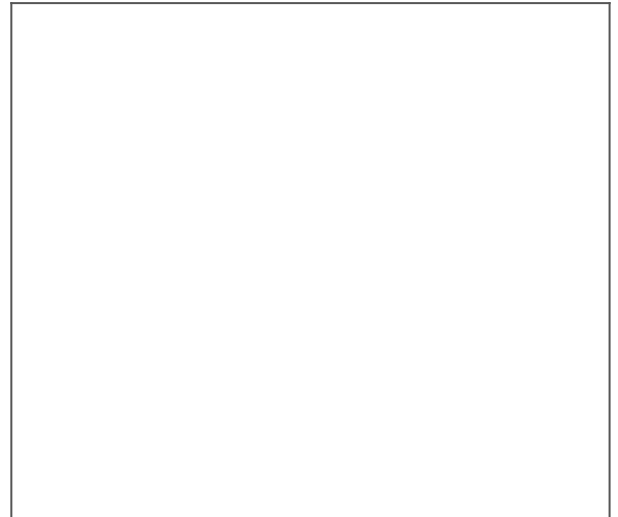
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Consider this situation...

Three brothers inherit the family farm business in the mid 1970's and grow it over a period of time. Each of the brothers gets married and has children - some of whom participate actively in the business and some of whom do not.

Over the next few decades, the brothers enjoy the highs, and suffer the lows, of a farm business. For the most part, all of the brothers contribute to the farm business. Over a period of time, one of the brothers, seeing the need to diversify and always looking for additional opportunities, starts devoting significant efforts to pursuing opportunities that are not strictly relating to the core farm business. The other opportunities do not materialize, at least not in the short term. This creates a great deal of frustration for the other brothers (who are naturally more risk-adverse), although nothing is said by the two other brothers (except to each other) as these other opportunities are being explored. On top of that, the eldest brother is seven years older than the next older brother and has had some health issues that have made him reassess his contribution to the farm business. The eldest brother wants to scale back his involvement. He has a son and daughter that help out in the business from time to time, but neither of them is prepared to be involved full time, so a transition to them is not an option. He would not mind his brothers buying out his interest, but they are very far apart in terms of what



they each feel that interest is worth. The eldest brother views the other two as being opportunistic because the succession to his family is not a realistic option for him, and the success of the farm, according to him, has been in no small part as a result of his sweat, equity and acumen over the last 20-30 years. He now feels stuck. Not surprisingly, no partnership or shareholders agreement was ever entered into when they inherited the farm. Each of the brothers now talks very little with the others.

What to do?

This is a difficult situation to be in. There are obviously some hard feelings that have developed over time and, unfortunately, the chances of a situation like this resolving itself amicably do not seem very high. The worst case scenario is litigation or even a forced unwinding of the farm business. Families being what they are, the hard feelings between the brothers has the potential to extend to the children as well.

Such an outcome, although not uncommon, is very unfortunate. Some of these issues may have been avoided had the brothers gone through the process of seeking legal advice and entering into a partnership, shareholders or joint venture agreement to govern their relationship as it relates to the farm business. These types of agreements will have clauses that can establish a mechanism to allow one partner or shareholder to leave in an orderly manner and should contain a mechanism to establish a fair value. In addition, the agreements should contain restrictions on what the brothers can and cannot do in the farm business. They will also contain provisions to address how they will keep the business running if more funds are required and establish parameters about how decisions will be made, including decisions required on a day-to-day basis and also on a more fundamental basis, such as an expansion of the farm business.

If any of the provisions of the agreement are breached, or if the brothers reach an impasse in their relationship, there is recourse and there are mechanisms to address most situations.

Perhaps the more important result is that if the brothers are properly engaged at the beginning of the process, they will be forced to address and manage the expectations about what each will contribute to the farm business and what each will expect from the others. While this may seem basic, it is often surprising that parties either have different ideas of what they are required or expected to do until specific scenarios are presented to them, or they simply haven't turned their minds to some of these particular issues. Going through the process before a problem occurs allows decisions to be made and parameters to be set on a

more objective basis, rather than trying to resolve the issue once people are justifying actions that have already been taken. This could involve setting out specific requirements, job descriptions, compensation, entitlements such as vacation, etc. It is wise to consider having the agreement contemplate a periodic review of such provisions to allow the specific requirements, job descriptions, compensation and entitlements to evolve as the farm business evolves.

This significantly limits the potential for conflict because all of the parties are clear on their obligations and what is expected of them and the others going forward.

Had our three brothers engaged in this process, the likely result would be that the approval of all of the brothers would be necessary to allow one of them to pursue other opportunities. Whether or not the opportunity succeeds, all of the brothers are part of the process and decision-making, and this limits the potential for conflict between them.

Also, with a properly prepared agreement, the eldest brother does not have to negotiate with the others about the value of his interest because a method and formula for valuation may have already been agreed to by all of the brothers. Even with a typical 'shotgun' clause, there is still a mechanism that forces the brothers to be commercially reasonable, and avoids, or at least minimizes, forced negotiations where the brothers are all directly adverse in interest at that point in time.

Ultimately, the benefit of these types of agreements is that you have a farm business which has parameters to allow it to run more efficiently and you minimize the potential for disputes and conflict within the extended family.

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